in the Society, but the knowledge which people generally have regarding this particular transaction or document is far out of proportion to the real importance of the thing itself.

## Address of Hon. Elihu Root, President of the Society, on The Real Significance of the Declaration of London.

The principal achievement of The Hague Conference of 1907 was the Convention for an International Prize Court. That convention provided for a real and permanent court composed of judges who were to be appointed by the contracting Powers for terms of six years, were required to be "judges of known proficiency in questions of international maritime law and of the highest moral reputation," and were to be paid a stated compensation from a fund contributed by all the Powers.

Jurisdiction was conferred upon the court to review on appeal all judgments of national prize courts. By a subsequent agreement, for the purpose of avoiding difficulties presented by the constitutions of some of the signatory Powers, an alternative procedure was authorized under which the new court might pass upon the question involved in the case of prize *de novo,* and notwithstanding any judgment of the national prize court, instead of passing upon it by way of appeal from that judgment. Article 7 of the convention provides:

> If a question of law to be decided is covered by a treaty in force between the belligerent captor and a Power which is itself or whose subject or citizen is a party to the proceedings, the court is governed by the provisions of the said treaty.
>
> In the absence of such provisions the court shall apply the rule of international law. If no generally recognized rule exists the court shall give judgment in accordance with the general principles of justice and equity.

In estimating the value of such an agreement among the civilized Powers it is worth while even for a student of international law to recall the wide range and critical importance of the questions to be included within the jurisdiction of the new court.

When war breaks out between two considerable maritime Powers the commerce of the whole world is immediately affected. Each belligerent nation undertakes, so far as it can, to cripple its enemy

both by direct military and naval operations and by cutting off supplies, interfering with sources of income, and generally weakening the enemy's national power to maintain an army and navy.

The liability of enemy merchant ships to capture tends to throw the commerce formerly carried on by the belligerent nations into the hands of neutrals while the necessary policy of each belligerent urges it to circumscribe and prevent so far as it can the neutral commerce with the other belligerent. Blockades and searches and seizures for carrying contraband goods are familiar methods of giving effect to this policy. Added to this is the necessity of constant watchfulness by belligerents to prevent neutral vessels from rendering direct service to the enemy's forces, such as the transportation of officers and troops or messengers, or the transmission of intelligence. In this way belligerents fall into an attitude of suspicion toward neutral vessels and unfriendliness toward neutral commerce, and the peaceable commerce of the world falls into an attitude of resenting what it regards as unwarranted interference.

The most striking illustration of this tendency is to be found in the tremendous conflicts of the Napoleonic wars, when Pitt and Napoleon waged war not merely with armies and navies but with British orders in council and Continental decrees. The Prussian Decree which began the series at the instance of Napoleon, on the 28th of March, 1806, declared the coast of the North Sea closed against Great Britain. On the 8th of April, 1806, Great Britain retaliated for that decree by the first order in council, which declared the blockade of the Ems, the Weser, the Elbe, and the Trave. On the 16th of May, 1806, came the second order in council declaring a blockade of the whole coast of the Continent from the Elbe to Brest. On the 14th of October, 1806, Napoleon retaliated with the famous Berlin Decree, which prohibited all commerce with England. On the 7th of January, 1807, another British order in council declared all neutral trading with France, or from port to port with any possession of France, or with any of the allies of France anywhere, to be ground for condemnation. On the 17th of December, 1807, Napoleon's Milan Decree declared a sentence of outlawry upon England and all English ships. It was impossible that such a process should not involve all Europe in a universal war; and an aftermath of England's enforcement of her policy upon the neutral shipping of the United States was the War of 1812.

The Civil War in the United States gave rise to a multitude of controversies between the United States and Great Britain, arising on one side from the seizure by the United States of numerous vessels charged with directly or indirectly attempting to violate the blockade of the southern coast, or with carrying contraband, and arising on the other side from the fitting out of Confederate cruisers in the neutral ports of Great Britain. The negotiations which led to the settlement of both classes of these claims by arbitration under the Treaty of Washington involved no slight strain upon the temper and good sense of both nations, and the result was reached against most violent protest on the part of many who preferred war to concession.

In the recent war between Russia and Japan a feeling of strong resentment was created in England by Russia's course in sinking the British merchantmen, the *Knight Commander,* the *Saint Kilda,* the *Hipsang,* and the *Allenton,* and in the capture of the *Malacca* by Russian vessels which had passed the Dardanelles and the Suez Canal as merchantmen and then converted themselves into cruisers.

There is no more fruitful source of international controversy, of international resentment and dislike, than in the great multitude of questions relating to the rights and wrongs of neutrals and of belligerents in a war between maritime Powers. The tendency always is for the war to spread through these controversies and exasperated feelings, and the adjudication of questions by national prize courts naturally fails to allay the irritation. Provision for the international judicial determination of such questions is adapted not only to preserve the substantial rights of neutral commerce and of belligerents, but also to prevent the spread of war much as municipal ordinances are framed to check the spread of fire, and sanitary regulations to prevent the communication of infectious disease. Considered by itself, the concurrence of the major part of the civilized world in the project of this convention was an event of the first importance in the development of international peace.

When Great Britain, however, came to consider the ratification of the Prize Court Convention she found herself confronted by practical considerations arising from her insular position, her dependence upon foreign food supplies, the wide extension of her colonial empire, her enormous merchant marine, and the relation between the effectiveness of her great navy and her national existence. The effect of

these considerations upon the Government of Great Britain is best stated in the words of a communication which that government addressed on the 27th of February, 1908, to the other principal maritime Powers. In that communication Sir Edward Grey said:

> Article 7 of the convention provides that, in the absence of treaty stipulations applicable to the case, the court is to decide the appeals that come before it, in accordance with the rules of international law, or if no generally recognized rules exist, in accordance with the general principles of justice and equity.
>
> The discussions which took place at The Hague during the recent conference showed that on various questions connected with maritime war divergent views and practices prevailed among the nations of the world. Upon some of these subjects an agreement was reached, but on others it was not found possible within the period for which the conference assembled, to arrive at an understanding. The impression was gained that the establishment of the International Prize Court would not meet with general acceptance so long as vagueness and uncertainty exist as to the principles which the court, in dealing with appeals brought before it, would apply to questions of far-reaching importance affecting naval policy and practice.
>
> His Majesty's Government therefore propose that another conference should assemble during the autumn of the present year, with the object of arriving at an agreement as to what are the generally recognized principles of international law, within the meaning of paragraph 2 of Article 7 of the convention, as to those matters wherein the practice of nations has varied, and of then formulating the rules which, in the absence of special treaty provisions applicable to a particular case, the court should observe in dealing with appeals brought before it for decision.

That is to say, the realization of the International Prize Court must be postponed until an agreement can be reached upon the rules of law and the principles of justice and equity which the court is to apply to international controversies. No dissent from this view appears to have been expressed and, pursuant to the British invitation, Austria-Hungary, France, Germany, Italy, Japan, Russia, Spain, The Netherlands, and the United States, sent their delegates to the proposed conference in London. The conference met on the 4th of December, 1908, and continued to the 26th of February, 1909.

The task of the conference was delicate and difficult. The Declaration of Paris in 1856 had, it is true, furnished four rules as a point of departure:

(1) Privateering is and remains abolished.
(2) The neutral flag covers enemy's merchandise with the exception of contraband of war.
(3) Neutral merchandise, with the exception of contraband of war, is not capturable under the enemy's flag.
(4) Blockades, in order to be obligatory, must be effective; that is to say, maintained by a force sufficient to really prevent access to the coast of the enemy.

But the half century which had elapsed since the Declaration of Paris had shown that these rules left uncovered a great field of controversy and that they had themselves given rise to numerous questions for which they afforded no solution. The divergent views upon these subjects of controversy had become intrenched in many traditional ideas of different nations as to the requirements of their national interests either as possible belligerents or possible neutrals, and these ideas made concessions difficult, so difficult that at the Second Hague Conference it had been found quite impracticable to reach any conclusions upon questions of this character having real importance.

The members of the London Conference addressed themselves to their work with ability, knowledge, and good temper, and they agreed upon a code of rules which they called a "Declaration concerning the Laws of Naval War," and which is known as the Declaration of London. The first chapter of the declaration, containing 21 articles, deals with the law of blockade in time of war. The second chapter covers the law of contraband, in 23 articles. The third chapter contains 3 articles upon the law of unneutral service. The fourth chapter, 7 articles, on the destruction of neutral prizes. The fifth chapter, 2 articles, on transfer of flag. The sixth chapter, 4 articles, on enemy character. The seventh chapter, 2 articles regarding convoy. The eighth chapter, 1 article concerning resistance to search. The ninth chapter, an article upon compensation. Then follow 7 final articles. The preamble of the declaration declares the Powers (naming them):

Considering the invitation which the British Government has given to various Powers to meet in conference in order to determine together as to what are the generally recognized rules of international law within the meaning of Article 7 of the Convention of 18th October, 1907, relative to the establishment of an International Prize Court;

Recognizing all the advantages which in the unfortunate event of a naval war an agreement as to the said rules would present, both as regards peaceful commerce, and as regards the belligerents and as regards their political relations with neutral governments;

Considering that the general principles of international law are often in their practical application the subject of divergent procedure;

Animated by the desire to insure henceforward a greater uniformity in this respect;

Hoping that a work so important to the common welfare will meet with general approval:

Have appointed as their plenipotentiaries, that is to say: [Names of plenipotentiaries.]

Who, after having communicated their full powers, found in good and due form, have agreed to make the present declaration:—

*Preliminary Provision.*

The signatory Powers are agreed in declaring that the rules contained in the following chapters correspond in substance with the generally recognized principles of international law.

It is interesting to observe that in the rules regarding contraband, the doctrine of continuous voyages, with which the Americans were so much concerned during the Civil War, is applied to absolute contraband but not to conditional contraband; that the great extension of the list of contraband articles, which, in the war between Russia and Japan, caused such general dissatisfaction among neutrals and threatened to nullify the doctrine that free ships make free goods, has been checked by a definite list of articles, which are not under any circumstances to be considered contraband, and by carefully framed provisions requiring affirmative proof that goods are destined for the use of the armed forces or a government department of the enemy as a condition upon the right to seize conditional contraband. It is also interesting that the question so much discussed at the time of the *Trent* affair between England and the United States has been disposed of by the provision of Article 47 that "any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel may be made a prisoner of war even though there may be no ground for the capture of the vessel."

This by implication excludes civil agents such as Mason and Slidell from capture but approves the method followed by Captain Wilkes in taking persons assumed to be liable to capture from the vessel and releasing the vessel.

It is not, however, my purpose to discuss the specific provisions of these rules.

The declaration was accompanied by a very lucid and illuminating

report prepared by M. Renault, which was presented to the conference upon behalf of the drafting committee and which, under Continental usage, is to be treated as an authoritative explanation of the text. The report says of the declaration:

The body of rules contained in the declaration, which is the result of the deliberations of the Naval Conference, and which is to be entitled Declaration concerning the Laws of Naval War, answers well to the desire expressed by the British Government in its invitation of February, 1908. The questions of the program are all settled except two, concerning which explanations will be given later. The solutions have been deduced from the various views or different practices and correspond to what may be called the *media sententia.* They do not always harmonize absolutely with the views peculiar to each country, but they do not shock the essential ideas of any. They should not be examined separately, but as a whole, otherwise one runs the risk of the most serious misunderstandings. In fact, if one considers one or more isolated rules either from the belligerent or the neutral point of view, he may find the interests with which he is especially concerned have been disregarded by the adoption of these rules, but the rules have their other side. The work is one of compromise and a mutual concession. Is it, as a whole, a good work?

We confidently hope that those who study it seriously will answer affirmatively. The declaration substitutes uniformity and certainty for the diversity and the obscurity from which international relations have too long suffered. The conference has tried to reconcile in an equitable and practical way the rights of belligerents and those of neutral commerce; it is made up of Powers placed in very unlike conditions, from the political, economic, and geographical points of view. There is on this account reason to suppose that the rules on which these Powers are in accord take sufficient account of the different interests involved, and hence may be accepted without disadvantage by all the others.

Two questions proposed by Great Britain to the conference remain unanswered: One, relating to the transformation of merchant vessels into warships on the high seas, and the other, the question whether the nationality or the domicile of the owner should be adopted in determining whether property is enemy property. Upon these questions the divergence of views remains unsettled. But throughout the great field of controversy in this branch of international law all existing differences have been settled by fair agreement upon just and reasonable rules.

Professor Westlake said, in the *Nineteenth Century,* for March, 1910:

That the ten greatest naval powers of the world should have met in conference on the laws of naval war as affecting neutrals, and that after careful consideration they should have agreed upon a code so comprehensive as that contained in the Declaration of London, would alone suffice to make the year nineteen hundred and nine memorable to all who are interested in the improvement of international relations. It remains for the year nineteen hundred and ten to make that code binding on the parties by ratification, after which the natural course of events will speedily make it the binding code of the world.

It appeared to many of us, indeed, when the agreement was reached and the conference dissolved, that a great thing had been done and that the way had been cleared to carry into effect the Prize Court Convention and to establish upon a permanent basis the judicial settlement of this class of international controversies through the application of an accepted code of law.

Unfortunately, that belief has not been justified. An excited controversy immediately arose regarding the effect of the rules contained in the Declaration of London upon the interests of Great Britain. One set of objectors declared that the rules sacrificed the interests of Great Britain as a belligerent. Another set asserted that the rules destroyed the interests of Great Britain as a neutral. Both could not be true, yet each set of objectors continued strenuously to oppose the declaration upon its own grounds.

An examination of the arguments on both sides in Great Britain leads to the conclusion that Mr. Norman Bentwich sums up the controversy fairly when he says, in the *Fortnightly Review:*

Great Britain should now be in a position to ratify The Hague Prize Court Convention, when at least she has made the necessary changes in her national prize law. She has come out very well indeed from the international bargaining: she had most to lose by the previous uncertainty; she has gained most by the settlement. At Paris, in 1856, she gave up one of her most powerful belligerent rights—the right to capture enemy property in neutral ships. Now in London she has not given up a single established belligerent right of value, her sole concession being on the question of convoy which is more apparent than real; and, on the other hand, she has gained a number of safeguards for her neutral commerce, and a number of limitations of the alleged belligerent rights of other Powers. There is indeed a naval school which is bitterly hostile to the ratification of the declaration, on the ground that by it England gives up certain national claims of long standing and concedes certain rights against which she has long

struggled. But the claims we give up have not been effectively exercised by us, the rights we concede have regularly been practised against us.

Nevertheless, the Prize Court Bill, introduced in Parliament to give effect to the convention and the declaration, passed the House of Commons but was rejected by the House of Lords, and so the matter stands.

This is unfortunate not merely because the rules of law contained in the declaration are wise and just and would be beneficial to the world, but because the most promising forward movement toward the peaceable settlement of international disputes is frustrated by the kind of treatment which, if persisted in, must apparently prevent all forward movement in the same line. The Prize Court Convention is representative of the general movement for judicial settlement. The Declaration of London is representative of the agreement upon the rules of international law which is essential to the establishment of the practice of judicial settlement in all other branches of international controversy.

For some time past there has been a growing impression among men familiar with international affairs that the obstacles to the development of any real system for the submission of international disputes to impartial decision are to be found not so much in the unwillingness of nations to submit their disputes to such a decision, but in the lack of adequate machinery through which such decisions may be secured. The tendency of arbitrations in which representatives of the disputing countries are joined with eminent publicists from other countries for the determination of international controversies is not to decide questions of fact and law, but it is to negotiate a settlement. Arbitrators as a rule act as diplomatists under the diplomatic sense of honorable obligation rather than as judges under the judicial sense of honorable obligation. Their tendency is to do what they think is wise and for the best interests of all concerned and to get the controversy disposed of in some way without too much ill feeling upon either side. In this process the frequent failure of international law to furnish any certain or undisputed guide for action affords free opportunity for the personal predilections of the arbitrator, often colored or determined by the prevailing opinions in the country from which he comes; and these opinions are often quite unlike those which prevail among the people of either of the disputing countries. If often happens,

therefore, that the selection of the arbitrators is the most critical and decisive step in the arbitration. It is very difficult to apply to such a proceeding the analogy of a judicial proceeding under municipal law for the trial and decision of cases between private litigants. It may well be that countries are unwilling to have their interests disposed of in that way, although they would be perfectly ready to submit their cases to the decision of judges acting under the judicial sense of responsibility. Many of us are convinced that the true line of development for the peaceable settlement of international controversies is to be found in the establishment of a real international court which shall hear and determine questions instead of negotiating a settlement of them. This question was much discussed in The Hague Conference of 1907, which approved and recommended to the Powers the adoption of a draft convention for the creation of a Judicial Arbitral Court to be composed of judges appointed for fixed periods with stated compensation and chosen from persons "fulfilling the conditions qualifying them in their respective countries to occupy high legal posts, or to be jurists of recognized competence in matters of international law." The procedure, powers, and jurisdiction of the court were all provided for and the draft convention as approved by the conference was defective only in not determining how the judges should be appointed. The determination upon this matter was prevented by difference of opinion between the larger and the smaller Powers represented in the conference. The provision for a general judicial court with jurisdiction to hear and determine all matters of international dispute was thus carried within one step of the completeness which was reached in the convention for the International Prize Court. The Prize Court thus became the advance guard of the proposed judicial system, the experiment upon which the success of the whole plainly depends. President Roosevelt, in his message to Congress of December 3, 1907, said truly:

Not only will the International Prize Court be the means of protecting the interest of neutrals, but it is in itself a step toward the creation of the most general court for the hearing of international controversies, to which reference has just been made. The organization and action of such a Prize Court cannot fail to accustom the different countries to the submission of international questions to the decision of an international tribunal, and we may confidently expect the results of such submission to bring about a general agreement upon the enlargement of the practice.

The relations between the project for the Prize Court and the project for the general Judicial Arbitral Court are so manifest that the United States has already proposed to the other Powers an enlargement of the jurisdiction of the Prize Court so that any question between the signatory Powers can be heard and determined by the judges of the Prize Court. This was done by instructions to the delegates of the United States at the London Conference, dated February 6, 1909, by an identic circular note to the Powers represented at that conference, dated March 5, 1909, and by a formal communication from the Department of State to the Powers, dated October 18, 1909. The form given to the proposal in the last mentioned communication from the American State Department was that there should be—

a further agreement that the International Court of Prize established by the Convention signed at The Hague, October 18, 1907, and the judges thereof shall be competent to entertain and decide any case of arbitration presented to it by a signatory of the International Court of Prize, and that when sitting as a Court of Arbitral Justice the said International Court of Prize shall conduct its proceedings in accordance with the draft convention for the establishment of a Court of Arbitral Justice, approved and recommended by the Second Hague Peace Conference, on October 18, 1907.

I am advised that this proposal was favorably received and that action to give it effect in some practicable form only awaits the ratification of the Prize Court Convention. This line of advance also is thus blocked by the failure to confirm the Declaration of London.

This review of the origin and nature of the Declaration of London and of the attendant conditions exhibits the true significance of the declaration. It is not merely a code of useful rules. It is necessary to the existence of the International Prize Court and therefore to the existence of any Judicial Arbitral Court. It is the one indispensable forward step without which no practical progress can now be made in the further development of a system of peaceable settlement of international disputes. It is to be hoped that a fuller realization of its far-reaching importance will soon lead to its acceptance. I cannot avoid the conviction that a broad-minded and statesmanlike treatment of this constructive measure for practical progress in international relations, is of greater value than merely benevolent but academic declarations in favor of peace which are to be found in general treaties of arbitration and in diplomatic correspondence and in public speeches.

Indeed, the whole practice of making general treaties of arbitration cannot fail to be discredited by the failure, if there is to be a failure, of the Prize Court Convention, for the cynical are sure to question the sincerity of general treaties of arbitration covering the whole field of international relations between nations which refuse to assent to this convention covering but a small part of the same field.

The PRESIDENT. Ladies and Gentlemen, the Society is very much honored, and I am sure you will all share with me in the pleasure received, from the presence here to-night of one of the greatest authorities upon international law of the continent of Europe.

I have the pleasure of introducing to you Señor Pasquale Fiore, a Senator of Italy, Professor of International Law in the University of Naples, who has prepared for us a discourse entitled "Some Considerations on the Past, Present and Future of International Law."

This paper has been translated into English and is ready for distribution. Señor Fiore will give to us now a résumé of the paper in French.

## ADDRESS OF SEÑOR PASQUALE FIORE, OF ITALY,

on

## SOME CONSIDERATIONS ON THE PAST, PRESENT AND FUTURE OF INTERNATIONAL LAW.*

[Translation.]

*Mr. President and Gentlemen:*

It stands out as one of the greatest incidents in my life that I have been able to come to America, which was the great aspiration of my compatriot, Christopher Columbus. The famous navigator has always maintained a unique fame, not so much because he discovered this country, as because he set sail determined to discover it, and firmly convinced that he would find it. The inspiration of his immortal genius continues to manifest itself through the length and breadth of your country, where all things are admirable, where all things are majestic, where unremitting, inexhaustible activity is fostered, even as was the genius who discovered it, by confidence in success.

*Translated from the French of Dr. Theodore Henckels, of Washington, D. C.